PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of	Docket No: Q78507
Satoshi ARAKAWA	
Appln. No.: 10/714,851	Group Art Unit: 2884
Confirmation No.: 3709	Examiner: Shun K. LEE
Filed: November 18, 2003	

For: RADIATION IMAGE READ-OUT APPARATUS

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated August 27, 2007. Entry of this Reply Brief is respectfully requested.

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STATUS OF CLAIMS

The instant application was filed with claims 1-5. Claims 6-10 were added in the Amendment filed January 24, 2006. Claims 1-10 are currently pending in the present application.

Claims 1, 2, and 4-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura (U.S. 4,780,376) in view of Neyens (U.S. 5,517,034) and Bradley (U.S. 5,043,991). Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura in view of Neyens and Bradley, and further in view of Research Disclosure 308117.

Claims 8 and 9 are now deemed to comply with 35 U.S.C. § 112, first paragraph, and second paragraph as stated at pages 2-3 of the Examiner's Answer. There being no prior art rejection of claims 8-9, claims 8-9 should now be deemed allowable.

Claim 10 is objected to as being allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claim.

The rejections of claims 1-9 are being appealed, to the extent there are any remaining issues of these claims.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 2, and 4-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura (U.S. 4,780,376) in view of Neyens (U.S. 5,517,034) and Bradley (U.S. 5,043,991).

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura in view of Neyens and Bradley, and further in view of Research Disclosure 308117.

Claims 8 and 9 are now deemed to comply with 35 U.S.C. § 112, first paragraph, and second paragraph as stated at pages 2-3 of the Examiner's Answer. There being no prior art rejection of claims 8-9, claims 8-9 should now be deemed allowable.

ARGUMENT

Most of the arguments set forth in the Examiner's Answer mailed May 24, 2007 are dealt with fully in Appellant's Brief on Appeal, but Appellant requests that the following additional remarks be considered.

The Examiner concedes that "Nakamura lacks an explicit description that the stimulating light projecting means includes wavelength fluctuations due to internal heating and that the stimulating light projecting means projects, onto the radiation image converter panel, stimulating light in a wavelength range where the rate of change of the intensity of the stimulated emission to a given change of the wavelength of the stimulating light is not larger than 1.0%/nm (or 0.5%/nm) and is not smaller than -1.0%/nm (or -0.5%/nm).[2] However, the Examiner submits that FIG. 1 of Nakamura discloses a peak stimulated emission intensity and, in the Examiner's figure submitted in the Examiner's Reply, a range of stimulated emission intensities that are within 99.5% of the peak stimulated emission intensity.[3] Further, the Examiner alleges that "it is clear from Fig. 1 of Nakamura that the stimulated emission intensity changes less than 0.5% (relative to the peak stimulated emission intensity $l_{em\text{-}max}$) when the stimulation wavelength is changed ±2.5 nm."[4]

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[2] See Examiner's Reply, page 5.

[3] See Examiner's Figure, Examiner's Reply, page 5. Note that the Examiner has added the lines to show the alleged emission intensities within 99.5% of the peak stimulated emission intensities.

[4] See Examiner's Reply pages 6 and 8-9.

In response, Appellants respectfully submit that the Examiner's reliance on FIG. 1 of Nakamura, and the Examiner's figure on page 5 of the Examiner's Reply, is misplaced. Specifically, Nakamura fails to identify the specific data points used to create the emission spectrum seen in FIG. 1. The Examiner can only guess as to the values on the spectrum which are within 1.0%/nm and -1.0%/nm of the peak value, and can further only guess the emission values in FIG. 1 of Nakamura for wavelengths ±2.5 nm (50 angstroms) from the wavelength of the peak emission.[5] The Examiner's basic error is imparting scale to the disclosure of Nakamura which cannot be done absent a specific teaching.[6] Further, claim 1 is directed toward the *intensity of the stimulated emission*. The vertical axis of FIG. 1 of Nakamura actually discloses *relative intensity of stimulated emission*. Thus, FIG. 1 of Nakamura cannot directly disclose a rate of change of the intensity of the stimulated emission to given change of the wavelength of the stimulating light as recited in claim 1, as the graph in FIG. 1 of Nakamura correlates a *relative* stimulated emission to wavelengths of stimulation light. This lack of precision due to relative intensity plot further magnifies the Examiner's error in relying upon FIG. 1 of Nakamura in the first instance.

Therefore, the Examiner would need to create graph correlating the *actual* intensity of stimulated emission to wavelengths of stimulation light as disclosed by Nakamura to use the

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[5] *See also*, FIG. 1 of Neyens. While Neyens shows an emission spectrum having emitted intensity versus stimulation wavelength, the disclosure in Neyens fails to indicate the actual values of the emitted intensity corresponding to the particular wavelengths cited by the Examiner (i.e. ±2.5 nm from the stimulating light wavelength at the maximum emission intensity).

[6] See *Hockerson-Halbestedt, Inc. v. Avia Group*. 55 USPQ 2d. 1487, 1491 (Fed. Cir. 2000).

graph to disclose "wherein the stimulating light projecting means projects, onto the radiation image converter panel, stimulating light in a wavelength range where the rate of change of the intensity of the stimulated emission to a given change of the wavelength of the stimulating light is not larger than 1.0%/nm and is not smaller than –1.0%/nm" as recited in claim 1.

In light of the above, FIG. 1 of Nakamura, *at best*, is ambiguous as to its disclosure regarding the stimulating light being in a wavelength range where the rate of change of the intensity of the stimulated emission to a given change of the wavelength of the stimulating light is not larger than 1.0%/nm and is not smaller than –1.0%/nm.[7] However, the Federal Circuit has held that ambiguities in the cited art must be construed against the Examiner.[8]

Finally, Appellants submit that to the extent that any of the references can be interpreted to show no rate of change, it is at a tangent to the maximum, in which there is no wavelength variation, thereby obviating the "change of wavelength" described by the appealed claims. To the extent that any difference in wavelength change in the art results in an intensity change, the degree of slope, or rate of change in intensity, is simply not explicitly or inherently disclosed by the art. The speculation on the part of the Examiner is only compounded by the improper assumption of scale in the Figures of the cited art, which are imprecise at best. The rejections of the independent claims should be withdrawn for all of the above reasons.

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[7] *See also,* FIG. 1 of Neyens.

[8] *See* In re Robertson, 49 USPQ2d 1949, 1951 (Fed. Cir. 1999).

Therefore, Appellants respectfully submit that the Examiner's proposed combination fails to disclose all of the elements of claim 1, and claim 1 is patentable over the applied art. Claims 2 and 4-7 are patentable at least by virtue of their dependency from claim 1.

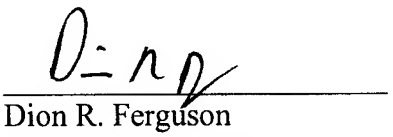
Claim 3 remains patentable at least by virtue of its dependency from claim 1.

Claims 8-9 should now also be deemed allowable over the art of record.

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,



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